

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

October 23, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

KAUAI

Amend Prior Board Actions of September 26, 2008 (J-3), Grant of Perpetual, Non-Exclusive Easement to The County of Kauai, Parks and Recreation Department for access and maintenance of County of Kauai, Park Facilities and (J-4), Grant of Perpetual, Non-Exclusive Easement to Kauai Island Utility Cooperative for Utility Purposes, Kapaa, Kawaihau, Kauai, Tax Map Key: (4) 4-5-06: 01.

BACKGROUND:

The Land Board at its September 26, 2008 meeting under item J-3, approved staff's recommendation to authorize the issuance of a perpetual, non-exclusive easement to the County of Kauai, Parks and Recreation Department for access, landscaping and maintenance purposes. Please see Land Board Submittal J-3 as EXHIBIT "A". Briefly, the County of Kauai ("County") recently completed new improvements of a restroom, bikeway, landscaping and pedestrian path at Lihi County Park directly makai and adjacent the Division of Boating and Ocean Recreation ("DOBOR") Waikaea Boat Ramp facility. It was discovered that the path improvement encroached into a portion of the Waikaea Boat Ramp facility and required an easement from the State.

Additionally, the Land Board at its September 26, 2008 meeting under item J-4, approved staff's recommendation to authorize the issuance of a perpetual, non-exclusive easement to Kauai Island Utility Cooperative ("KIUC") for utility purposes. Please see Land Board submittal J-4 as EXHIBIT "B". Briefly, as part of the Lihi Park improvement project, power for the restroom would be accomplished by KIUC installing an underground electrical line from a pole located on the Waikaea Boat Ramp facility to the new County restroom.

ITEM J-1

REMARKS:

During the process to complete the easements, we discovered errors in our Board submittals.

For the easement to the County of Kauai, (J-3), we need to delete any reference to:

- a) Consideration;
- b) Annual rent;
- c) pay for an appraisal;
- d) process and obtain subdivision;
- e) obtain a title report to ascertain ownership; and
- f) Recommendation 2. The perpetual easement shall inure to the benefit of the real property described as Tax Map Key: (4) 4-5-6:1.

Concerning a, b and c, our reasoning is the County of Kauai is a government agency and gratis should be applicable. Furthermore, the County Lihi Park improvements are of benefit not only to the park users but also to the public and all ocean recreation users utilizing the Waikaea Boat Ramp facility.

Concerning d, we contacted the County of Kauai, Department of Planning and learned that the easement would not require subdivision approval.

Concerning e, the easement is on State-owned property under the jurisdiction of DBOR, therefore a title report would not be necessary.

Concerning f, the tax map key referenced is State-owned property under the jurisdiction of DBOR. This provision is normally applicable for private property owners. The adjacent Lihi County Park is State-owned land set aside to the County. Therefore, Recommendation 2 is not necessary.

For the easement to KIUC (J-4), we need to delete any reference to:

- a) Consideration;
- b) Annual rent;
- c) pay for an appraisal;
- d) process and obtain subdivision;
- e) obtain a title report to ascertain ownership; and
- f) Recommendation 2. The perpetual easement shall inure to the benefit of the real property described as Tax Map Key: (4) 4-5-6:1.

Concerning a, b and c, our reasoning is that the easement to KIUC is solely to serve the government improvements of the County of Kauai's Lihi County Park project. The County of Kauai is requesting favorable consideration by the Land Board that the easement issued to

KIUC be gratis. To keep continuity with existing electric lines and integrate with the new improvements, it was necessary for KIUC to install underground electrical lines for the restroom instead of overhead lines.

Concerning d, we contacted the County of Kauai, Department of Planning and learned that the easement would not require subdivision approval.

Concerning e, the easement is on State-owned property under the jurisdiction of DBOR, therefore a title report is really not necessary.

Concerning f, the tax map key referenced is State-owned property under the jurisdiction of DBOR. This provision is normally applicable for private property owners. The adjacent Lihi County Park is State-owned land set aside to the County. Therefore, Recommendation 2 is not necessary.

Additionally, for the easement to KIUC, we need to revise:

- a) Character of use; and
- b) Recommendation stating "area for access, landscaping and maintenance purposes".

Concerning a, instead of "a right-of-way under and across State-owned land for access and utility purposes" it should be revised to "underground electrical lines over, under and across State-owned land." For the easement, utility purposes covers a wide range of uses by electrical or telephone companies. Examples are: telecommunication/electrical transmission lines, poles, guy wires and anchors. In this case, DBOR would like the easement to be specific to "underground electrical lines".

Concerning b, it was incorrectly stated as "area for access, landscaping and maintenance purposes" and should be revised to "underground electrical lines".

Upon Land Board approval of our corrections, the Attorney General's office will be preparing the easement documents. We apologize for the inconvenience this has created due to our staff's error in the original submittals.

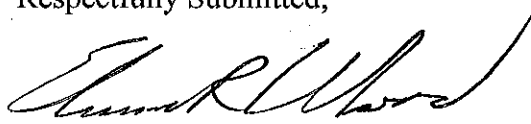
RECOMMENDATION: That the Board

1. Amend its prior action of September 26, 2009, under agenda Items J-3 by
 - a. Delete any references to Consideration, Annual rent, Pay for an appraisal, Process and obtain subdivision, and Obtain title report.
 - b. Delete Recommendation 2. The perpetual easement shall inure to the benefit of the real property described as Tax Map Key: (4) 4-5-06:01.

ITEM J-1

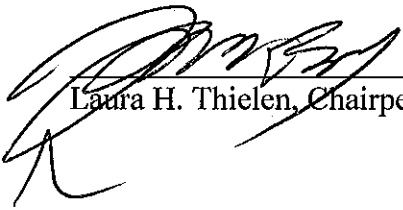
2. Amend its prior action of September 26, 2009, under agenda Items J-4 by
 - a. Delete any references to Consideration, Annual rent, Pay for an appraisal, Process and obtain subdivision, and Obtain title report.
 - b. Delete Recommendation 2. The perpetual easement shall inure to the benefit of the real property described as Tax Map Key: (4) 4-5-06:01.
 - c. Revise Character of Use from "a right-of-way under and across State-owned land for access and utility purposes" to "underground electrical lines over, under and across State-owned land."
 - d. Revise Recommendation from "area for access, landscaping and maintenance purposes" to "underground electrical lines".
3. All terms and conditions listed in its September 26, 2008 approval to remain the same.

Respectfully Submitted,



Edward R. Underwood, Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

ITEM J-1

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813
September 26, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

KAUAI

Grant of Perpetual, Non-Exclusive Easement to The County of Kauai, Parks and Recreation Department, for access and maintenance of County of Kauai, Park Facilities, Kapaa, Kawaihau, Kauai, Tax Map Key: (4) 4-5-06: 01.

APPLICANTS:

County of Kauai, Parks and Recreation Department, whose mailing address is 4444 Rice Street, Lihue, Kauai, Hawaii, 96766.

LEGAL REFERENCE:

Section 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of the State, DLNR, Division of Boating and Ocean Recreation's (DBOR) Waikaea Boat Ramp, situated at Kapaa, Kawaihau, Kauai, identified by Tax Map Key: (4) 4-5-06: 01, as shown on the attached map labeled Exhibit A (Easement M-1).

AREA:

.08 acres, more or less to County of Kauai, shown on EXHIBIT A.

ZONING:

State Land Use District: Urban
County of Kauai CZO: Open

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

APPROVED

☒ As submitted
☐ As amended
by the Board of Land
and Natural Resources
at its meeting held on

SEP 26, 2008

J-3

EXHIBIT "A"

CURRENT USE STATUS:

Portion of DBOR Waikaea Ramp facility

CHARACTER OF USE:

For access, right, privilege and authority to construct, use, maintain and repair a right-of-way over, State Land for maintenance of landscape improvements, bike-way and pedestrian path.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Subject to review and approval by the Chairperson.

TERM:

Perpetuity

ANNUAL RENT:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC Environmental Notice in August of 2003 with a finding of no significant impact (FONSI).

DCCA VERIFICATION:

None required for Government Agency.

APPLICANT REQUIREMENTS:

- 1) Pay for an appraisal to determine initial rent/one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.
- 3) Process and obtain subdivision at Applicant's own cost.
- 4) Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department.

REMARKS:

The County of Kauai is in the process of finishing the new improvements at Lihi County Park, with the completion of a new restroom facility, landscaping, bike-way and pedestrian path (path). The majority of the improvements on County property are neighboring the State Division of Boating and Ocean Recreation's (DBOR) Waikaea Boat Ramp Facility.

The Lihi Park improvements are part of a design/build project including the path, which has slightly encroached into a portion of State land of the DBOR facility. This encroachment was missed during the design reviews of the project. The County's request to be granted a non-exclusive easement will be used for access, landscaping, irrigation and maintenance of the County improvements. The County improvements shall allow both the boaters and park users to access the restrooms by way of the path over the canal.


RECOMMENDATION:

That the Board:

Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to The County of Kauai, covering the subject area for access, landscaping and maintenance purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

1. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
2. The perpetual easement shall inure to the benefit of the real property described as Tax Map Key: (4) 4-5-06: 01
3. Review and approval by the Department of the Attorney General; and
4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

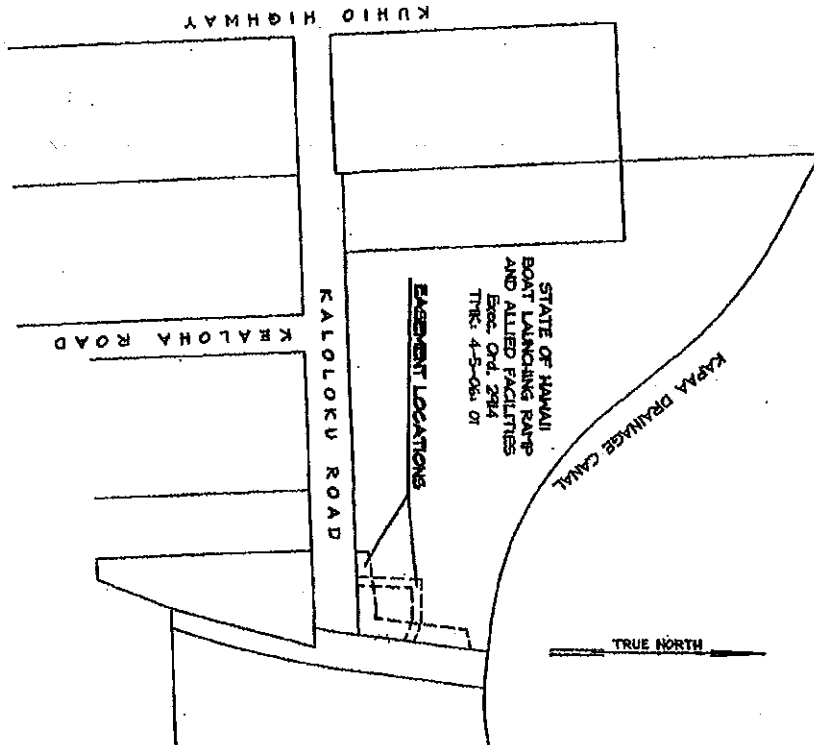


Edward R. Underwood

APPROVED FOR SUBMITTAL:


Laura H. Thielen, Chairperson

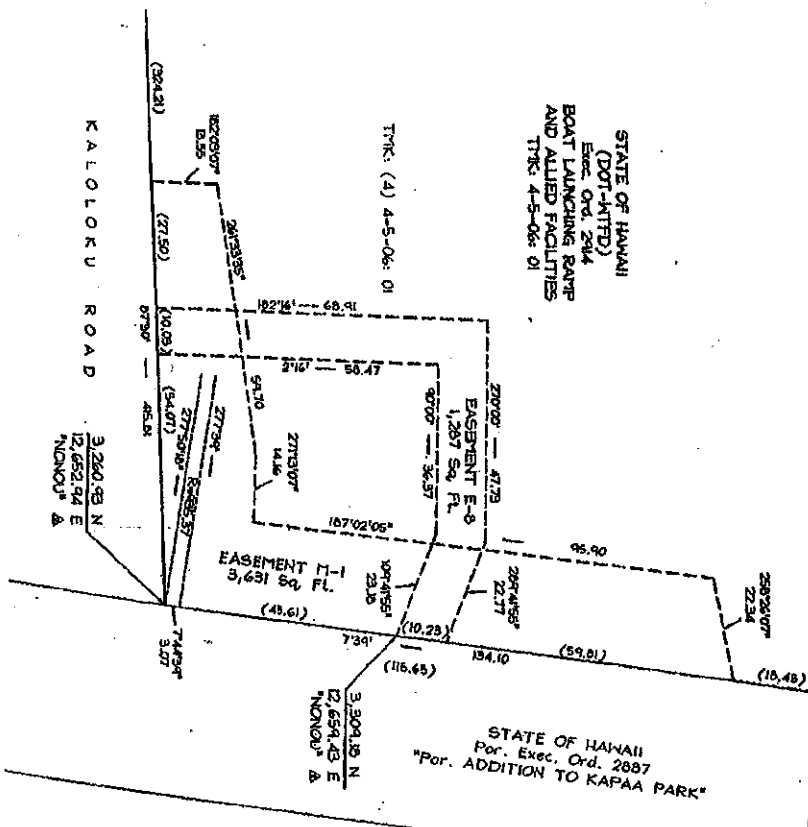
Vicinity Map



THIS WORK WAS PREPARED BY ME
OR UNDER MY SUPERVISION
DATE: APRIL 20, 2009



ENLARGEMENT



**DESIGNATION OF EASEMENT E-6
AND EASEMENT M-1**
BEING PORTION OF
STATE OF HAWAII
BOAT LAUNCHING RAMP
AND ALLIED FACILITIES SITE
Executive Order 2914
KAPAA, KAUAI, HAWAII
TRK: (4) 4-5-06-01
Prepared For: Alameda and Assoc.
Date: February 28, 2009

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813
September 26, 2008

KAUAI

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Grant of Perpetual, Non-Exclusive Easement to Kauai Island Utility Cooperative for Utility
Purposes, Kapaa, Kawaihau, Kauai, Tax Map Key: (4) 4-5-06: 01.

APPLICANT:

Kauai Island Utility Cooperative whose business and mailing address is 4463 Pahee Street, Lihue,
Kauai, Hawaii, 96766.

LEGAL REFERENCE:

Section 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of the State, DLNR, Division of Boating and Ocean Recreation's
(DBOR) Waikaea Boat Ramp, situated at Kapaa, Kawaihau, Kauai, identified by Tax Map Key:
(4) 4-5-06:01, as shown on the attached map labeled Exhibit A (Easement E-8)

AREA:

0.03 acres, more or less to Kauai Island Utility Cooperative.

ZONING:

State Land Use District: Urban
County of Kauai CZO: Open

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Portion of DBOR Waikaea Ramp facility

APPROVED

☒ As submitted
☐ As amended
by the Board of Land
and Natural Resources
at its meeting held on

J-4

Sept. 26, 2008

EXHIBIT "B"

CHARACTER OF USE:

For access, right, privilege and authority to construct, use, maintain and repair a right-of-way under and across State-owned land for access and utility purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-Time payment to be determined by independent or Staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

TERM:

Perpetuity

ANNUAL RENT:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice in August of 2003 with a finding of no significant impact (FONSI).

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u> </u>

APPLICANT REQUIREMENTS:

- 1) Pay for an appraisal to determine initial rent/one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.
- 3) Process and obtain subdivision at Applicant's own cost.
- 4) Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department.

REMARKS:

The County of Kauai (County) is in the process of finishing the new improvements at Lihi County Park, with the completion of a new restroom facility, landscaping, bike-path and pedestrian walkway. The new improvements shall benefit both the County Park and the boat ramp users. The

majority of the improvements are on County property neighboring the State, Department of Land and Natural Resources, Division of Boating and Ocean Recreation's (DBOR) Waiakea Boat Ramp Facility (Ramp).

When addressing the need for power to the restroom, the best source was determined to be a light pole located a short distance from the County Path positioned on DOBOR property. The electrical line will run to a separate meter that shall be placed on the new County restroom. To complete and maintain the electrical improvements, Kauai Island Utility Cooperative requests a non-exclusive easement to access and maintain the underground electrical lines on the DOBOR land running from the light pole to the County portion of the Path and Restroom.


RECOMMENDATION:

That the Board:

Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to Kauai Island Utility Cooperative covering the subject area for access, landscaping and maintenance purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

1. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
2. The perpetual easement shall inure to the benefit of the real property described as Tax Map Key: (4) 4-5-06: 01
3. Review and approval by the Department of the Attorney General; and
4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



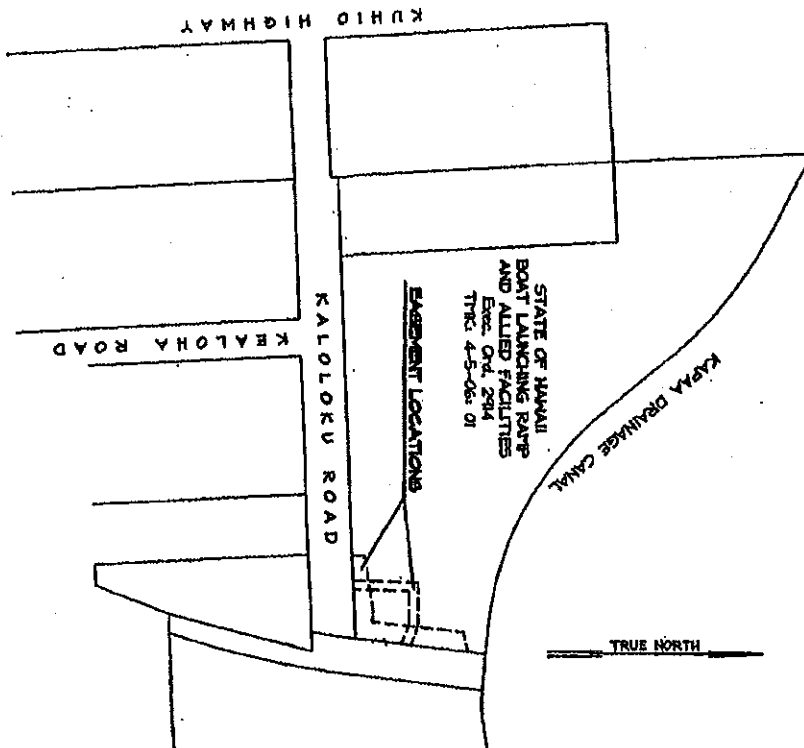
Edward R. Underwood

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

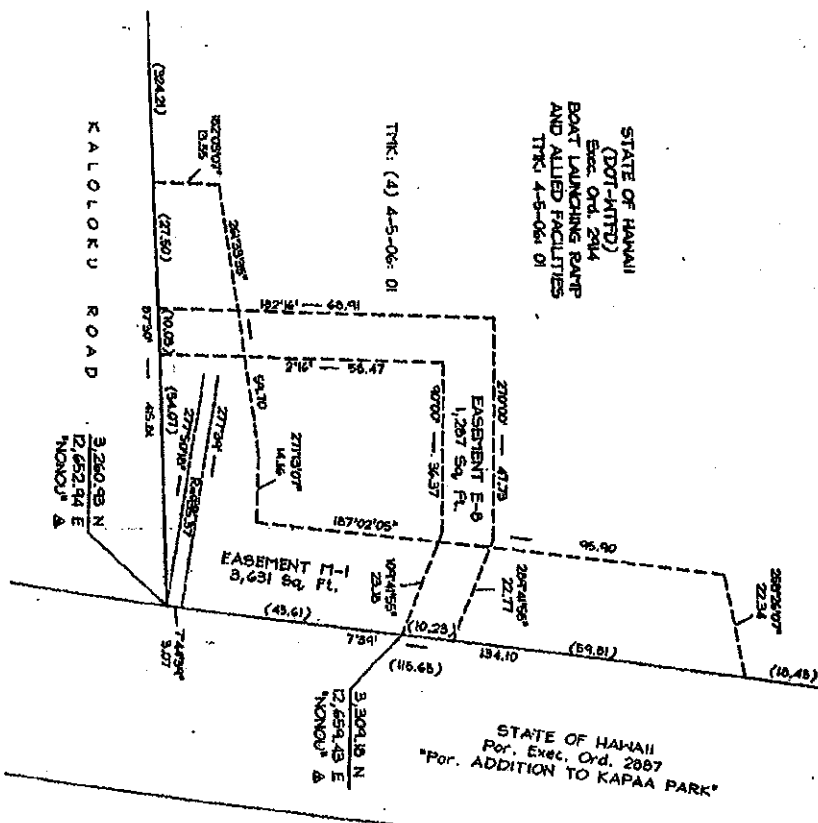
Vicinity Map



THIS WORK WAS PREPARED BY ME
OR UNDER MY SUPERVISION
DATE: APRIL 30, 2008



ENLARGEMENT



STATE OF HAWAII
Por. Exec. Ord. 2887
"Por. ADDITION TO KAPAA PARK"

TRUE NORTH
Scale 1" = 20'

DESIGNATION OF EASEMENT E-0 AND EASEMENT E-1 BEING PORTION OF STATE OF HAWAII BOAT LAUNCHING RAMP AND ALLIED FACILITIES SITE

Executive Order 2914
KAPAA, KAUAI, HAWAII
TRK: (4) 4-5-06: 01
Prepared For: Alaska and Assoc.
Date: February 20, 2008